



DEPARTMENT OF VETERANS AFFAIRS
Washington DC 20420

July 19, 2019

In Reply Refer To: 001B
FOIA Request: 19-02016-F

Cerissa Cafasso, Counsel
American Oversight
1030 15th Street NW, Suite B255
Washington, DC 20005
foia@americanoversight.org

Dear Cerissa Cafasso

This is the Initial Agency Decision (IAD) from Office of the Secretary, U.S. Dept. of Veterans Affairs (OSVA) to your Freedom of Information Act (FOIA) request dated and received November 20, 2018 and assigned FOIA tracking number **19-02016-F**. You requested:

1. "All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Face book or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (a) any political appointees* at your agency and (b) any person in the Office of the White House, including any person whose email address ends in @who.eop.gov, discussing, concerning, or related to Ivanka Trump (or alternatively styled "Ivanka Kushner") and her use of non-governmental email, including any email address ending in @ijkfanuly.org.
2. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (a) any political appointees* at your agency and (b) any person in the Office of the White House, including any person whose email address ends in @who.eop.gov, discussing, concerning, or related to Ivanka Trump (or alternatively styled "Ivanka Kushner") and FOIA.
3. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) between (a) any political appointees* at your agency and (b) any nongovernmental email address attributed to Ivanka Trump (or alternatively styled "Ivanka Kushner"), including but not limited to any email address ending in @ijkfamily.org.
4. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of any political appointees* at your agency discussing, concerning, or related to Ivanka Trump (or alternatively styled "Ivanka Kushner"), FOIA, and the law firm Wilmer Hale. This request includes communications directly with the law firm Wilmer Hale.

5. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of any political appointees* at your agency discussing, concerning, or related to Ivanka Trump (or alternatively styled "Ivanka Kushner"), FOIA, and the law firm Norton Rose Fulbright This request includes communications directly with the law firm Norton Rose Fulbright
6. All records reflecting communications (including but not limited to emails, email attachments, voicemail transcripts, text messages, messages on messaging platforms (such as Slack, GChat or Google Hangouts, Lync, Skype, WhatsApp, Signal, Facebook or Twitter Direct Messages), telephone call logs, calendar invitations/entries, meeting notices, meeting agendas, informational material, talking points, any handwritten or electronic notes taken during any oral communications, summaries of any oral communications, or other materials) of any political appointees* at your agency discussing, concerning, or related to Ivanka Trump (or alternatively styled "Ivanka Kushner"), FOIA, and the law firm Winston & Strawn. This request includes communications directly with the law firm Winston & Strawn."

November 30, 2018, Beginning of Reasonable Searches

On November 30, 2018, OSVA asked the VA OIT office to search for the requested emails and calendars. On January 10, 2019, the VA OIT office submitted emails and calendars, with the OSVA FOIA Officer to conduct secondary searches. Records that OSVA created after our search cut-off date, November 30, are not considered within the scope of your FOIA request. FOIA does not obligate agencies to create records, but only to process records that already exist as of the cut-off date. LaRoche v. SEC, 289 F. App'x 231, 231 (9th Cir. 2008) (explaining that agency was not required to create new documents to satisfy FOIA request); Poll v. U.S. Office of Special Counsel, No. 99-4021, 2000 WL 14422, at *5 n.2 (10th Cir. Jan. 10, 2000) (recognizing that FOIA does not require agency "'to create documents or opinions in response to an individual's request for information'" (quoting Huddins v. IRS, 620 F. Supp. 19, 21 (D.D.C. 1985))); Sorrells v. United States, No. 97-5586, 1998 WL 58080, at *1 (6th Cir. Feb. 6, 1998) (advising that agency is not required to compile document that "contain[s] a full, legible signature"); Krohn v. DOJ, 628 F.2d 195, 197-98 (D.C. Cir. 1980) (finding that agency "cannot be compelled to create the [intermediary records] necessary to produce" information sought); *Citizen's Guide on Using FOIA*, U.S. House Oversight & Gov't Reform Comm. §V.B, pp. 6 (Sept. 2012), <https://oversight.house.gov/wp-content/uploads/2012/09/Citizens-Guide-on-Using-FOIA.2012.pdf> ("Please be advised an agency is not obligated to create a new record to comply with a request").

IAD & 7/18/19, Follow-Up Searches

On July 18, 2019, the OSVA FOIA Officer conducted follow-up searches of the email boxes that the VA OIT provided. On July 18, 2019, the OSVA FOIA Officer searched through the following emailboxes with the date timeframe of January 1, 2017, to November 30, 2018:

- 1) Casin Spero,
- 2) Darin Selnick,
- 3) David Shulkin,
- 4) Jacquelyn Hayes-Byrd,
- 5) Jake Leinenkugel,
- 6) Jim Byrne,
- 7) Michael Lukach,
- 8) Pam Powers,
- 9) Peter O'Rourke,

- 10) Robert Wilkie,
- 11) Thomas Bowman, and,
- 12) Vivieca Wright-Simpson.

The OSVA FOIA Officer used the following stemmed search terms: 1) Ivanka, AND 2) ("non-governmental email") OR FOIA OR @ijkfamily.org. The OSVA also conducted a second search for all emails to, from, or copying email addresses with the domain @ijkfamily.org. Despite these two (2) separate, reasonable searches, the OSVA FOIA Officer found no responsive records. Thus, OSVA issues you a "no records" response.

FOIA Mediation

As part of the 2007 FOIA amendments, the Office of Government Information Services (OGIS) was created to offer mediation services to resolve disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. Using OGIS services does not affect your right to pursue litigation. Under the provisions of the FOIA Improvement Act of 2016, the following contact information is provided to assist FOIA requesters in resolving disputes:

VA Central Office FOIA Public Liaison:

Name: John Buck

Email Address: vacofoiaservice@va.gov

Office of Government Information Services (OGIS)

Email Address: ogis@nara.gov

Fax: 202-741-5769

Mailing address:

National Archives and Records Administration

8601 Adelphi Road

College Park, MD 20740-6001

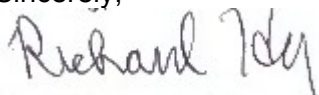
FOIA Appeal

This concludes OSVA's IAD to FOIA request **19-02016-F**. Please be advised that should you desire to do so, you may appeal the determination made in this response to:

Office of General Counsel (024)
Department of Veterans Affairs
810 Vermont Avenue, NW
Washington, DC 20420

If you should choose to file an appeal, please include a copy of this letter with your written appeal and clearly indicate the basis for your disagreement with the determination set forth in this response. Please be advised that in accordance with VA's implementing FOIA regulations at 38 C.F.R. § 1.559, your appeal must be postmarked no later than ninety (90) days of the date of this letter.

Sincerely,



Richard Ha, JD, CIPP/G
OSVA FOIA Officer